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9 Attorneys for Plaintiff JENS ERIK SORENSEN,
as Trustee of SORENSEN RESEARCH AND
10 DEVELOPMENT TRUST

11 UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 JENS ERIK SORENSEN, as Trustee of) Case No. 07-CV-02278-BTM-CAB
14 SORENSEN RESEARCH AND)
15 DEVELOPMENT TRUST,)
16 Plaintiff,)
17 v.)
18 HELEN OF TROY Texas Corporation;)
19 OXO International Ltd.; and DOES 1-)
100,)
20 Defendants.)
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) **DECLARATION OF J. MICHAEL**
)) **KALER IN SUPPORT OF**
)) **PLAINTIFF'S OPPOSITION TO**
)) **DEFENDANT'S MOTION TO STAY**
)) **PENDING OUTCOME OF**
)) **REEXAMINATION PROCEEDINGS**
)) Date: February 22, 2008
)) Time: 11:00 a.m.
)) Courtroom 15 – 5th Floor
)) The Hon. Barry T. Moskowitz
))
)) *NO ORAL ARGUMENT*
)) *UNLESS REQUESTED BY THE COURT*
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1 I, J. Michael Kaler, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I
3 have personal knowledge of the facts contained within the following paragraphs, and
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. At all times relevant herein I have been an attorney for Sorensen
6 Research and Development Trust (“SRDT”), Plaintiff in the above-captioned matter.

7 3. This Declaration is being submitted in conjunction with Plaintiff’s
8 Opposition to Defendants’ Motion for Stay Pending Outcome of Reexamination
9 Proceedings.

10 4. A related ‘184 patent case, Sorensen v. Black & Decker Corporation, et
11 al, Case No. 06cv1572, has been stayed pending a third-party patent reexamination
12 requested filed in July 2007 by Black & Decker (“1st reexamination”). The 1st
13 reexamination is already in its seventh month and the first office action has not yet
14 issued.

15 5. Plaintiff declined to file an optional patent owner’s statement in
16 response to the reexamination request in order to shorten the reexamination process.
17 Black & Decker was thereby barred from a second filing with the USPTO regarding
18 the 1st reexamination.

19 6. A full six months after the 1st reexamination request had been filed, co-
20 defendants Phillips Plastics and Hi-Tech Plastics filed their own third-party
21 reexamination request (“2nd reexamination”) with the USPTO, citing some of same
22 prior art listed in the 1st reexamination request.

23 7. Although the USPTO has not yet issued any response to the 2nd
24 reexamination request, which is not due until about March 23, 2008, it is likely that
25 this 2nd reexamination request will complicate and lengthen the time from the 1st
26 reexamination filing to completion of the reexamination.

27 8. Based on more recent research, the likely time period for conclusion of
28 a reexamination is at least five years, extending to nearly eight years if an appeal is

1 made to the Federal Circuit. In the past, it was reported that reexaminations
2 generally take from six months to three years. *Telemac*, 405 F. Supp.2d at 1110
3 (citing *In re Cygnus Telecomm. Tech., LLC Patent Litig.*, 385 F.Supp.2d 1022, 1023
4 (N.D.Cal. 2005). These numbers may be based on outdated information. The San
5 Diego Intellectual Property Lawyers Association (“SDIPLA”) newsletter, SDIPLA
6 News, Vol. 11, Issue 10, Feb. 2008, reports that when one looks only at recent years,
7 “the average ex parte reexamination now takes about 5 years (vs. the PTO’s claim
8 that it takes 2 years). If an appeal to the CAFC is involved, that extends the period to
9 7.7 years.”

10
11 RESPECTFULLY SUBMITTED this Friday, February 08, 2008.
12

13 JENS ERIK SORENSEN, as Trustee of
14 SORENSEN RESEARCH AND DEVELOPMENT
TRUST, Plaintiff

15
16 /s/ J. Michael Kaler

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18 J. Michael Kaler, Esq.
Attorney for Plaintiff

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PROOF OF SERVICE

I, J. Michael Kaler declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kaler Law Offices, 9930 Mesa Rim Road, Suite 200, San Diego, California, 92121. I am a member of the State Bar of California and the Bar of this Court.

On February 8, 2008, I served on the parties to this action the following documents:

**DECLARATION OF J. MICHAEL KALER IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION TO STAY PENDING OUTCOME OF
REEXAMINATION PROCEEDINGS**

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
Erik B. Von Ziepel Seyfarth Shaw LLP 2029 Century Park East, Suite 3300 Los Angeles, CA 90067 evonzeipel@seyfarth.com	Helen of Troy Texas Corporation; Oxo International Ltd.	Email--Pleadings Filed with the Court via CM/ECF

- (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
 - (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
 - (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.
 - (Email) I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.
 - (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

1 I declare that the foregoing is true and correct, and that this declaration was executed on Friday,
2 February 08, 2008, in San Diego, California.

3 /s/ J. Michael Kaler
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5 J. Michael Kaler
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